

Legal Framework for Managing Private Archival Materials: Current Status and Proposed Solutions

Khuôn khổ pháp luật về quản lý tài liệu lưu trữ tư trong giai đoạn
hiện nay - Thực trạng và giải pháp

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Abstract: The management of archival documents in general, and private archival documents in particular, plays a crucial role in implementing policy regimes, contributing to the preservation, maintenance, and utilization of the archival value of individuals, organizations, and even national treasures. However, in the current context, the institutional framework for managing private archival documents remains incomplete, and the human and financial resources allocated to this task are limited. Issues regarding rights of donation, ownership, and usage rights of archival documents still present numerous gaps in both practice and legality. This article discusses the necessity of managing private archival documents, the current situation, and several solutions to improve legal frameworks for managing private archival documents amidst amendments to the Archives Law of 2011.

Keywords: *Archival documents; Law; Management; Model; Private archival documents.*

Tóm tắt: Quản lý tài liệu lưu trữ nói chung và quản lý tài liệu lưu trữ tư đóng vai trò quan trọng trong thực hiện chế độ chính sách, góp phần bảo vệ, giữ gìn và phát huy giá trị tài liệu lưu trữ của cá nhân, tổ chức và thậm chí có những tài liệu là bảo vật quốc gia. Tuy nhiên, trong điều kiện hiện nay, thể chế quản lý tài liệu lưu trữ tư chưa được hoàn thiện, nguồn nhân lực, tài chính phục vụ cho hoạt động quản lý tài liệu lưu trữ tư còn hạn chế... các mối quan hệ về quyền tặng cho, quyền sở hữu, tác quyền sử dụng tài liệu lưu trữ vẫn còn nhiều khoảng trống trong thực tiễn và pháp lý. Bài viết này, tác giả luận giải sự cần thiết cần phải quản lý tài liệu lưu trữ tư, thực trạng và một số giải pháp hoàn thiện pháp luật về quản lý tài liệu lưu trữ tư trong bối cảnh sửa đổi Luật Lưu trữ năm 2011.

Từ khóa: *Mô hình, Pháp luật; Quản lý; Tài liệu lưu trữ; Tài liệu lưu trữ tư.*

1. Conceptualization of Private Archival Document Management

Archival materials are documents selected for preservation due to their value in serving practical activities, scientific research, and history. Archival materials include originals, duplicates; in case originals or duplicates are no longer available, they are replaced by legal copies [1]. Private archival materials are documents formed during the activities of private organizations, individuals, families, or lineages, possessing various values and selected for preservation. Private

archival materials are diverse and rich, including documents of organizations such as companies, enterprises, social organizations established and managed by private individuals, as well as archival materials of individuals, families, and lineages. Private archival materials serve as important sources of information for research and evaluation of the development of history, economy, culture, society. Management of private archival materials or state management of private archival materials is the organized impact and regulation by state power on the management of archival

materials of private organizations, individuals, families, and lineages. Characteristics of the management of private archival materials. The management of private archival materials bears the characteristics of state management such as state power, enforcement, continuity, and the unique features of managing private archival materials.

Regarding the objectives of managing private archival materials, it serves practical activities, scientific research, history, and the implementation of policy regimes, contributing to the protection, preservation, and utilization of the archival values of individuals and organizations.

Regarding the subjects of managing private archival materials, central agencies responsible for managing private archival materials include the Government, Ministry of Home Affairs, National Archives and Records Administration. Local agencies responsible for managing private archival materials include People's Committees at provincial and district levels, Department of Home Affairs, and People's Committees at district level, Department of Home Affairs. These are the agencies that perform the function of state management of archival materials, such as issuing policies, organizing the implementation of policies, and controlling the implementation of policies regarding private archival materials.

Regarding the objects of managing private archival materials, they are diverse in terms of composition and content, including documents of individuals, families, lineages such as

genealogy, family records, diplomas, awards, biographical documents; handwritten drafts, printed copies with annotations, scientific research works, creative works, correspondence; films, photographs; audio recordings; electronic documents; personal writings; publications, documents collected by individuals (Article 5, Archives Law 2011); and documents of private organizations such as administrative and accounting documents (including documents reflecting the management processes, activities of organizations related to organization of officials, financial and accounting management, pre-employment screening, commendation, international cooperation, etc.); documents on organizational structure, personnel (including decisions to establish organizations, operating regulations, capital contribution contracts, business registration certificates, seal registration certificates...) and professional documents (Professional documents of economic organizations include: product research, goods, production and business, investment, market development, capital, currency, and professional documents of Association organizations such as: documents on member development, charity, social activities... of Associations) [2]. These archival materials reflect the multifaceted value of the entire development process of private organizations as well as the activities of individuals, families, and lineages.

Regarding the content of managing private archival materials, it includes: issuing policies and laws on the management of private archival

materials; disseminating laws on the management of private archival materials; organizing personnel to carry out the management of private archival materials; training and fostering civil servants, officials in charge of managing private archival materials; inspection, examination of law enforcement, commendation and reward for the management of private archival materials. The flexibility and adaptability of managing private archival materials, the issue of managing private archival materials has not been fully and specifically regulated, only mentioning the management of materials of individuals, families, and lineages without addressing the management of archival materials of non-state entities (private archival materials). In addition, public resources are increasingly limited, and the management of private archival materials lays the groundwork for private organizations and individuals, families, and lineages to manage, preserve, and utilize the value of documents.

2. Models of Managing Private Archival Materials

2.1. Model of Managing Private Archival Materials of State Agencies and Units

Vietnam has 5 National Archives Centers under the National Archives and Records Administration managing over 30 thousand meters of valuable documents. In addition to state-owned documents, National Archives Centers also preserve archival materials of artists and famous individuals in Vietnam. National Archives Center No. 1 is preserving documents collected from various locations nationwide,

including collections such as documents from Huong Khe, Vinh Linh, documents from the Hong Duc period, Chau Ban Trieu Bao Dai collection by researcher Phan Thuan An, family seals collection, etc [3]. The center has collected a collection of ancient seals from families, lineages, and villages with over 500 documents including both originals and copied versions. National Archives Center No. 2 is preserving 74 collections of documents from individuals, families, lineages, including paper documents, DVDs, handwritten documents, film rolls, etc. Notable collections include Han-Nom documents like those of Luong y Tu An, documents from the family of Phan Chu Trinh, documents from military officers and leaders of the Vietnam People's Army donated, such as the Davis Camp event collection (1973 - 1975), documents of Major General Phung Dinh Am - Former Deputy Commander of the 779th Front... National Archives Center No. 3 is preserving over 100 collections of documents from outstanding individuals in various fields such as documents from Professors, historian Dao Duy Anh; Professor, Mathematician, Minister of University Tạ Quang Bửu; Poet Cù Huy Cận, Sketchbook of the National Emblem of Vietnam by artist Bùi Trang Chước, recognized as a National Treasure in 2021. The center collects oral history materials through recording interviews with 12 outstanding individuals... Individuals donate documents to National Archives Center No. 3 according to certain criteria such as being outstanding, famous individuals with excellent achievements in their fields of activity or receiving State awards, Ho Chi Minh awards. In

addition to National Archives Centers, local archives are actively collecting and propagating, mobilizing individuals, organizations with deposited documents into archive agencies for centralized management such as the Historical Archive Center of Hanoi City, the Provincial Historical Archive Center of Ha Tinh Province... Furthermore, families, lineages, or individuals also have private archives, but their activities are still spontaneous and unprofessional.

- Advantages:

+ Documents are preserved according to standards, standard procedures as regulated by archival laws.

+ State funding support for archiving expenses from the state budget.

+ Professional human resources with skills in preserving, storing, and utilizing the value of archival materials (with a dedicated staff for document disclosure activities).

- Limitations:

+ Not all documents are collected according to state standards due to the extensive volume of private archival materials.

+ The state budget is increasingly limited due to allocation for various other activities.

2.2. Models of managing private archival materials by private organizations and agencies

The Heritage Center of Vietnamese Scientists has referred to the Arthur and Elizabeth Schlesinger Library model on the History of Women in the United States (at Harvard University, USA) in organizing, operating, and creatively developing into a multifunctional unit:

archives, museum, and library. This is a unit operating on a corporate mechanism, with functions of both archives and museum, aiming to research, preserve, and promote the heritage value of Vietnamese scientists. The Heritage Center of Vietnamese Scientists has collected tens of thousands of documents including drafts, research papers, notebooks, diaries, correspondence, administrative documents, archival photos, etc., of prominent Vietnamese scientists such as Professor Ton That Tung (in the medical field), Professor Doan Trong Tuyen (in economics), Professor Nguyen Canh Toan (in mathematics)... The center has gathered and stored 800 thousand documents, artifacts, over 400 thousand minutes of audio recordings, over 150 thousand minutes of video recordings of nearly 2000 scientists [4]. Center staff have recorded, filmed, and interviewed hundreds of scientists, thus forming an oral history archive.

The Limited Liability Center for Science and Technology Archives in Saigon was established in 2009 based on the personal archives of Dr. Pham Thi Hue - former Director of the National Archives Center No. 4 and Dr. Nguyen Xuan Hoai - former Director of the National Archives Center II. In addition to services related to archives, storage, and libraries, the center is also storing some personal archival materials entrusted or donated by some scientists.

- Advantages:

+ Diverse and rich model;

+ Meets the flexibility of the market;

+ Combines activities such as tourism, hotels, and storage.

- Limitations:

- + Newly established agencies, units, and centers emerge spontaneously;

- +Legal regulations are not comprehensive enough;

- +The workforce lacks professionalism and proper training;

- +There are no activities to fully utilize the value of archival materials such as publication.

3. Current state of managing private archival materials

3.1. Advantages

Firstly, enacting policies and laws on the management of private archival materials. Archiving laws in countries such as France, Canada, Russia, etc., show that these laws have fairly comprehensive provisions on the management of private archival materials such as the scope of private archival materials, ownership rights of private archival materials, the right to decide on private archival materials in buying, giving, consigning for storage, and exploiting archival materials; state protection policies for private archival materials, and regimes of honor, rewards for owners of archival materials in giving documents to state archives. Our country has issued some legal normative documents on archival work including provisions related to personal, family, and lineage archival materials such as the Archiving Law, Decree No. 01/2013/ND-CP dated January 03, 2013 of the Government detailing a number of articles of the Archiving Law in 2011. Specifically, the Archiving Law in 2011: "Acknowledges ownership rights to archival materials" (Article 4), "Management of personal, family, and lineage documents" (Article 5). It determines 05 groups of documents

with practical, scientific research, and historical value for the nation, society to be registered under the National Archives Profile of Vietnam; Archives of the locality where registered are responsible for determining the value of the 05 document groups above; regulations on the 06 rights and 02 obligations of individuals with documents. At the same time, Decree No. 01/2013/ND-CP detailing the implementation of some articles of the Archiving Law has regulations on the use of archival materials related to individuals being stored at the History Archives (Article 16), authority to permit the use of documents related to individuals (Article 17). These documents have created an important legal corridor in the management of personal, family, and lineage archival materials.

The Archiving Law in 2011 has stipulated the entities responsible for managing archival materials as follows: "1. The Government uniformly manages state archives. 2. The Ministry of Home Affairs is responsible to the Government for implementing state management of archives and managing the State Archives Profile of Vietnam. 3. The authorized agencies of the Communist Party of Vietnam implement the management of the Communist Party of Vietnam Archives Profile. 4. Ministries, ministerial-level agencies, and central organizations of political - social organizations within the scope of their tasks and powers implement management of archives. 5. People's Committees at all levels within the scope of their tasks and powers implement state management of archives at the local level" [5].

they include the Government, Ministry of Home Affairs, State Archives and Records Administration, Provincial People's Committees, Department of Home Affairs, District People's Committees, Department of Home Affairs. According to decisions regulating functions, tasks, powers, and organizational structure, at the central level, national archival centers and Electronic Archives Centers have the function of collecting and managing private archival materials, specifically managing materials of exemplary individuals, families, lineages. At the local level, the task of collecting private archival materials is assigned to the Provincial Archives and Records Administration (in Hai Phong) or the Provincial Historical Archives Centers (in Hanoi, Ha Tinh,...). Besides archives at various levels, there are also museums, libraries, historical sites, and private organizations operating in this field according to the functions, tasks stipulated by law or the purpose of their activities.

Personnel are a decisive factor in the effectiveness and efficiency of state management of private archival materials. In reality, national archival centers have allocated, arranged experienced personnel with suitable qualifications for the job positions to carry out the task of collecting archival materials of individuals, families, lineages in particular, and private archival materials in general.

Fourthly, scientific research and training, fostering civil servants, employees for the work of managing private archival materials.

In recent years, scientific research on archival materials in general and

archival materials in particular has been paid attention to. However, in terms of quantity, conferences, research topics, training sessions, and seminars... are more focused on state archival management, while private archival management accounts for a smaller proportion. State archival management agencies and individuals engaged in archival work and teaching have carried out scientific topics, and organized seminars, symposiums on private archival materials such as: International workshop "Organization and promotion of the value of people's archival documents" organized by the University of Social Sciences and Humanities in coordination with Gakushuin University (Japan) and Yongji University (South Korea) in 2012; Scientific workshop "Management of private archival materials" chaired by the State Archives and Records Administration in 2021... Research topics, seminars are the basis for reference and serve for the revision, supplementation, and improvement of laws on archival management.

Fifthly, inspection, examination of law enforcement, commendation and reward for the management of private archival materials.

Annually, according to plans, competent authorities still organize inspections and examinations of the implementation of laws by National Archives Centers in the management of archival materials in general and the management of materials of individuals, families, lineages in particular.

Individuals who contribute positively to the archival field, and have donated personal archival materials to National Archives Centers, these

centers have issued requests to the State Home Affairs for the awarding of the "For the Cause of Archives, Records" Medal. However, there are currently no regulations on inspection and commendation for private organizations, individuals storing private archival materials. This is also an issue that needs to be improved and supplemented in the amended Archives Law.

3.2. Limitations

Firstly, the lack of a legal framework
Currently, the state has issued some documents related to the management of private archival materials. However, these documents only address the management of archival materials of individuals that are significant to the nation and society as exemplary individuals, but there are no regulations regarding the majority of people's documents and documents of non-state organizations (private organizations). Furthermore, the scope of regulation of current archival laws still mainly focuses on state archives (public archives), and the presence of private archival materials is still very limited. The content and scope of private archival materials have not been defined and explained in the Archives Law of 2011.

Legal documents do not clearly specify: management of various types of archival materials formed in the activities of other organizations of a private nature (such as: businesses with less than 100% state-owned capital, private enterprises, social organizations established and managed by private individuals); the state's requisition regime for private archival materials in necessary cases; the responsibility of

individuals in disclosing archival materials related to national security, legitimate rights and interests of agencies, organizations; the transportation of documents abroad by document owners; ownership, inheritance rights of documents, purchase or donation of archival materials are not fully regulated, so individuals, families, lineages or non-state organizations are not confident in entrusting their materials to public archives for centralized management. In particular, archival laws do not have sanctions for violations related to the management of private archival materials. Additionally, other documents such as the Civil Code, Auction Law, Inheritance Law, Publishing Law... lack many detailed provisions related to the management of private archival materials.

The lack of a legal framework will cause many difficulties in the work of managing private archival materials. Therefore, in the coming time, it is necessary to supplement regulations related to private archival materials such as: definitions, scope, value, rights and obligations of individuals, responsibilities of state agencies...

Secondly, ineffective dissemination and popularization of laws on the management of private archival materials.

Due to the lack of regulations on the management of private archival materials, the dissemination and popularization of laws on the management of private archival materials have not been regularly and widely conducted for all layers of the population. The forms of dissemination are not diverse, and the target audience

mainly focuses on state agencies, ministries, officials and employees engaged in state archival management.

Thirdly, lack of uniformity in organizing models for managing private archival materials.

In reality, there are various models and organizational forms for managing private archival materials such as: self-management; donation to the state, self-preservation by private organizations... However, each form has its own advantages and disadvantages. If managed in state archives, private archival materials are professionally managed, have legal corridors for protection, and individuals can rest assured that their materials will be permanently preserved. However, not all private individuals' or organizations' documents can be stored in state archives. For private archival organizations, the criteria for storing documents are broader, but there are still no legal provisions on the functions, tasks, powers of private organizations in managing private archival materials, and the establishment of private archival organizations requires large financial and human resources. This is an issue that not every individual or organization can address, and the fate of private archival materials will be uncertain if there are changes in the leadership of private archival organizations. As for self-management of documents, individuals and organizations are not bound by any framework regulations; however, ensuring the safe preservation and longevity of archival materials is a matter of concern. Therefore, there may be a need for general regulations for managing private archival materials so that individuals, organizations, and state

archival agencies can effectively manage private archival materials in the current period.

Fourthly, awareness of private archival materials.

Although individual, family, lineage, and non-state organizations have paid more attention to preserving their documents, awareness of the value of documents is not high. They have not fully exploited the value of documents to serve education, propaganda, and the common interests of society. Although public archival agencies in Vietnam have conducted surveys and collected rare documents from individuals and organizations, due to lack of trust, many individuals, families, lineages, and non-state organizations do not donate or consign their materials. For example: The Tran lineage in Van Lang hamlet, Truc Tuan commune, Truc Ninh district, Nam Dinh province has 6 Imperial edicts that are historically valuable and contain a lot of information about the lineage, but they have not been sent to archival agencies. They fear that sending them will result in loss or inability to retrieve them when needed. Additionally, because they are lineage documents, sending them to archival agencies requires the consent of many people in the lineage.

Fifthly, inadequate infrastructure for managing private archival materials.

Vietnam is an economy that has grown but has not yet made a breakthrough to escape the middle-income trap, so it still faces many difficulties due to lack of warehouses and preservation equipment. The development of storage models for each family or private archival management model still faces many limitations. As

for state archives, although the management of archival materials in general and private archival materials is funded by the state budget, the budget resources are increasingly limited. Therefore, the socialization of private archival management is a direction to be aimed for in the next period.

4. Some solutions to ensure the management of private archival materials

Firstly, enhance the role of the State in managing private archival materials

State agencies need to pay attention to and develop specific management plans and programs for private archival materials. The Ministry of Home Affairs and People's Committees at all levels need to show appropriate attention to demonstrate their roles and responsibilities in managing private archival materials. Specifically, it is necessary to set overall objectives for state management of private archival materials; establish direction at management levels such as ministries, sectors, and local levels to determine objectives, tasks for each level, sector, system of solutions for implementation, criteria, implementation timeframes, leadership, and inspection in state management of private archival materials need to be unified, synchronized, and effective.

Secondly, continue to improve relevant legal regulations on the management of private archival materials.

State management agencies need to study and determine the institutional system for storage such as: authority to manage private archival materials; document owners can consign documents to Historical Archives or

Historical Archives for rental storage services as requested by document owners; obligation to apply preservation measures of state management agencies at the same level for private archival materials that need to be secured under poor storage conditions or for other reasons that may cause serious damage or unsafe preservation of archival materials; requisition, purchase of private archival materials in necessary cases by the state; rights and responsibilities of document owners in disclosing documents; access to private archival materials; bringing private archival materials abroad; consignment fees for documents to Historical Archives, incentives, rewards for managing private archival materials, etc.

In addition, for centralized storage at private archival storage facilities, the scope of activities, authority, and responsibilities of private archival storage organizations need to be defined [7]. Currently, there are no specific regulations to regulate the operations of private storage as well as no mechanisms to bind responsibilities for this type of activity. Supplement regulations on the conditions for establishing private storage: infrastructure, human resources, initial establishment costs, and ongoing operational costs of private storage; authority to manage documents when these facilities are dissolved, bankrupt.

Furthermore, the State needs to enact new laws or supplement regulations related to private archival storage into the Civil Code, Auction Law, Inheritance Law, Publishing Law, etc. Specifically: (i) Supplement the 2020 Reward Law and guidance documents

on implementing forms of reward, honor for organizations, individuals implementing private archival material management activities. (ii) Supplement the 2015 Penal Code, amend, and supplement the 2015 Penal Code on offenses related to the management of private archival materials. (iii) Supplement the 2012 Administrative Violations Handling Law, amend, and supplement the 2020 administrative penalties for violations of private archival material management. (iv) Supplement the 2015 Civil Code and guidance documents on inheritance rights, property rights related to private archival material management activities.

Thirdly, research and transfer skills for collecting, preserving, exploiting, and using private archival materials.

Guidance and implementation of archival operations to improve the quality and longevity of archival materials of individuals, families, lineages (restoration, reinforcement of damaged archival materials; making backup copies for rare documents...); building an automatic retrieval system, archival management software to meet the information retrieval needs of private archival materials.

Fourthly, enhance propaganda activities, raise awareness of society about private archival materials.

Developing plans, measures for propaganda, and disseminating guidelines to individuals, families, lineages, storage organizations, and businesses operating in the storage field to enhance awareness, understand responsibilities, rights, and know-how in storing and using privately owned archival materials is crucial.

Additionally, the content of the propaganda should focus on clarifying the significance and value of private archival materials, the responsibility of individuals in preserving and providing archival materials, and the responsibility of state agencies, officials, and public servants in state archival management activities regarding private archival materials. Particularly, intensifying propaganda and developing some centralized private archival management models, such as the document management model of the Heritage Center for Scientists in Hoa Binh, is essential. Furthermore, national archival centers or private archival organizations should develop plans to publish and introduce exemplary private archival materials from individuals, families, and lineages to help the public better understand the significance of private archival materials and the importance of preserving and managing them.

Fifthly, scientific research and training on private archival materials.

Archival agencies and training institutions need to conduct research on scientific topics related to the content, value, scope, legal regulations on private archival materials... Improve textbooks, lesson plans for teaching about private archival materials in training institutions, training archival personnel are necessary tasks in the current period. In addition, archival agencies and training institutions need to learn, refer to experiences, and cooperate in managing private archival materials of other countries in the coming time.

5. Conclusion

The management of private archival materials is one of the necessary needs in the current period. The article has outlined the current situation and proposed solutions to improve the effectiveness of managing private archival materials. The author hopes

that these solutions will have certain reference significance in the current practice of managing private archival materials in Vietnam, especially as we are conducting research, building policies on managing private archival materials in the process of amending and supplementing the Archives Law of 2011.

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